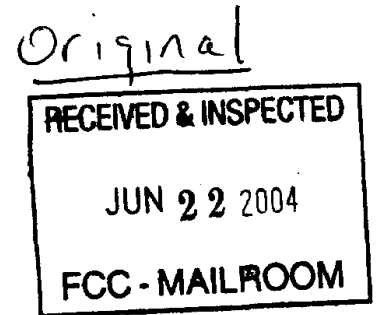


Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554



In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. _____
Table of Allotments)	
FM Broadcast Stations)	RM No. _____
(Culebra, Puerto Rico))	

To: Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau

PETITION FOR RULE MAKING

La Gigante Radio Corporation ("Petitioner"), permittee and operator by Special Temporary Authority ("STA") of Station WXZX-FM (the "Station"), by its counsel, hereby requests an amendment to the FM Table of Allotments by adding Channel 291A and deleting Channel 254A at Culebra, Puerto Rico, enabling Petitioner to obtain a permanent authorization for Culebra's first local service. If the Petition is granted, Petitioner will file an application to modify its operation of the WXZX facility to specify Channel 291A at Culebra. In support hereof, Petitioner states as follows:

1. Petitioner presently operates the Station on Channel 293A pursuant to an STA at coordinates 18-19 19 NL and 65-17-59 WL. Channel 291A can be allotted to Culebra using those coordinates as the reference point consistent with Section 73.207 of the Commission's Rules. As demonstrated in the attached contour map, a 70 dBu signal can be placed over the community of Culebra from the proposed reference point. The proposed allotment will provide a first local service to the community of Culebra.

2. To accommodate the allotment of Channel 291A at Culebra, the vacant

allotment on Channel 291B at Vieques must be deleted.¹ Deleting this allotment from Vieques raises no public interest concerns because the allotment has never been constructed, so the residents of Vieques have not come to rely on that service, and Vieques is already served by the full-time operation of AM Station WIVV.² Moreover, the public interest factors favor deleting the vacant allotment from Vieques and reallotting that channel to Culebra because the Culebra facility has been built and operational for nearly six years and the residents of Culebra have come to rely upon their first local service.

THE HISTORY OF THE CULEBRA ALLOTMENT

3. When applications for the Culebra allotment were first filed in 1991, Channel 293A was the channel allotted to Culebra as the community's first local service. Unfortunately, Culebra was one of the communities involved in MM Docket No. 91-259. In fact, Culebra was at the end of the so-called "daisy chain" of allotments affected by the orders adopted in that proceeding.³ The FCC's *R&O* in MM Docket 91-259, as affirmed on appeal,⁴ resulted in the deletion of Channel 293A and the addition of Channel 254A at Culebra.

4. Petitioners located a site that would allow operation of the Station on Channel 254A. However, Petitioner could not, and still cannot, seek an authorization to operate the Station on Channel 254A at Culebra because the stations ahead of it in the daisy chain have

¹ At the request of V.I. Stereo Communications, the licensee of WVIS-FM, Channel 291B was deleted from Christiansted, VI and allotted to Vieques, PR in the *Report and Order in MM Docket No. 91-259*, 10 FCC Rcd 6673 (1995) (the "*R&O*"). Applications were filed by V.I. Stereo (see file nos. BPH-19970116IF, granted 4/28/1998 and BPH-20010411AAD), however, the Commission cancelled the WVIS-FM license because construction of the Vieques facility did not take place in a timely manner and it was determined that WVIS-FM did not operate for a continuous twelve month period, terminating the authorization for the station as a matter of law. Thus, the Channel 291B allotment in Vieques was never constructed, and is now a vacant allotment.

² Even if WIVV(AM) was not already serving Vieques, there is sufficient support for the deletion of a community's only local service in cases where the station has not been constructed. See *Chatom and Grove Hill, Alabama*, DA 97-1170, released June 6, 1997.

³ See *R&O*; recon denied, *Memorandum Opinion and Order*, 11 FCC Rcd 16392 (1996); app. for review. denied, *Memorandum Opinion and Order*, 12 FCC Rcd 10055 (1997); further recon. denied, *Memorandum Opinion and Order*, FCC 99-147, released June 21, 1999 (64 Fed. Reg. 48307, September 3, 1999).

not moved their facilities to accommodate operation of the Station on Channel 254A at Culebra as they were directed to by the Commission. Petitioner is also prohibited from pursuing an authorization at the original allotment (Channel 293A) because that channel was deleted from the Table of Allotments upon finality of the *R&O* in MM Docket 91-259.

5. In order to initiate first local service to Culebra, Petitioners were forced to seek STA to operate the Station on Channel 293A, since it could not obtain permanent authorization on either its authorized, post-*R&O* channel, Channel 254A, or on its pre-*R&O* channel, Channel 293A. The STA was originally granted in 1998, and Petitioner has regularly renewed the STA to enable it to continue to provide first local service to the residents of Culebra. Petitioner would much prefer a permanent authorization to the STA.

6. Operation under an STA is perilous and uncertain, at best. Petitioner's operation of WXXZ is not protected from the filings of other primary stations. Not only is the operation unprotected, but the STA must be renewed every six months, compared to a permanent license which is issued for an eight year term. The uncertainty of the Station's status has made the sale of advertising and the hiring of personnel very difficult. All of these problems could be cured with the grant of this Petition, which in turn, would provide Petitioners with the ability to file an application for permanent authorization on Channel 291A.

7. Petitioner did not act sooner because it held out hope that there would be a means by which the outcome of MM Docket 91-259 would be enforced, which would have enabled Petitioner to apply for permanent authorization on Channel 254A, and would have made this Petition unnecessary. However, Petitioner has recently learned that all of the other stations ahead of WXXZ in the daisy chain have had their licenses renewed at their pre-*R&O* channels,

⁴ See footnote 2 for procedural history.

providing them with another eight year term in which to operate at those channels, while preventing Petitioner from obtaining a permanent authorization for WXZX.

WXZX NEEDS A PERMANENT CHANNEL ON WHICH TO OPERATE

8. Petitioner commenced operation of the station in 1998. In the nearly six years the station has operated, its listeners have come to rely upon the station for local news and information. The allotment of Channel 254A to Culebra became final in 1999. Petitioner has waited patiently since then for the stations ahead of it in the daisy chain to change channels as directed in the *R&O*. The stations have not moved voluntarily, and the Commission has not enforced the *R&O* by compelling channel changes. Grant of the Petition will serve the public interest by allowing Petitioner to obtain a permanent, protected authorization with which to operate WXZX and continue the first local service to Culebra that the Station's listeners have come to rely upon.

9. There should be no public interest concern in deleting Vieques' only allotment. The facility at Vieques was never constructed, so the residents have not come to rely on a local service.

10. Should the Commission grant this Petition and allot Channel 291A to Culebra, Puerto Rico, Petitioner will file an application for that allotment, and upon grant of the application, construct the Culebra facility as authorized.

WHEREFORE, Petitioner respectfully requests that Channel 254A be deleted and Channel 291A be allotted to Culebra, Puerto Rico, and Channel 291B be deleted from Vieques, Puerto Rico.

Respectfully submitted,

LA GIGANTE RADIO CORPORATION

By:

A handwritten signature in black ink, appearing to read 'Scott C. Cinnamon', is written over a horizontal line.

Scott C. Cinnamon
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Washington, D.C. 20005
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Its Counsel

June 21, 2004

**Requested Rule Making
La Gigante Radio Corporation
Culebra, Puerto Rico
June 2004**

Technical Comments

These Technical Comments are being filed on behalf of La Gigante Radio Corporation, ("La Gigante"), permittee of Channel 254 A, Culebra, Puerto Rico. La Gigante is the permittee on this channel but operates Station WXZX (FM) under a Special Temporary Authority on Channel 293 A.

BACKGROUND

La Gigante has been contacted by WNIK (FM), Channel 293 B1, Arecibo, Puerto Rico. WNIK (FM) operates co-channel to the La Gigante STA frequency of 293 A. This broadcaster claims that he is receiving interference from the La Gigante STA even though there is adequate spacing between the two facilities (See Exhibit 1). As a secondary service, the operation of WXZX (FM) is subject to such random claims as well as any modification applications filed by primary stations.

SOLUTION

V.I. Stereo Communications Corp. was issued a Construction Permit (BPH-19970116IF) to construct broadcast station WVIS (FM), Channel 291 B, Vieques, Puerto Rico. This Construction Permit expired on October 22, 1999. Subsequently, the Construction Permit has been deleted and the call sign changed to DWVIS to denote the station as being deleted. Even though WVIS

has been deleted, the Channel 291 B allocation to Vieques remains. This allocation has no indication that it is reserved for any station. The hypothetical allocation coordinates for this channel are a mere 0.63 KM from the CP and STA site for La Gigante's WXZX (FM) .

This proposal desires that Channel 291 B be deleted from Vieques and reallocated at Culebra and that La Gigante be ordered to Channel 291 A. This usage of Channel 291 is in agreement with all of the spacing regulations of Section 73.207 (See Exhibit 2). This will immediately eliminate any claims of interference to any other broadcast station.

The current Channel 254 A CP site will be utilized to broadcast on Channel 291 A. This site is identical to the La Gigante STA site for Channel 293 A. La Gigante proposes that the Channel 291 A allocation coordinates be North Latitude 18 19 19 and West Longitude 65 17 59. The supporting structure is already constructed, authorized by the FAA and is registered with the FCC. No additional tower construction is contemplated or required.

SERVICE TO VIEQUES

Although an allotment was made to Vieques and a Construction Permit issued, broadcast service to Vieques was never instituted. Therefore, since broadcasting never started, there is no loss of service to Vieques with the reallocation of Channel 291 from Vieques to Culebra. Additionally, Vieques is

served by WIVV (AM) radio station (1370 kHz, 5 KW Day and 1 KW Night).

Vieques is not in or near any urbanized area.

SERVICE TO CULEBRA

100% of Culebra is within the 70 dBu signal from the proposed allocation site.

WXZX (FM) serves all of Culebra with the 70 dBu signal per the current allocation on Channel 254 and well as from the current STA on Channel 293.

There will be no change on the new channel. Culebra is not in or near any urbanized area.

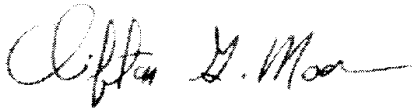
The WXZX (FM) broadcasting service to Culebra was instituted approximately six years ago. Residents of Culebra rely on news, information and public affairs from WXZX (FM). La Gigante's WXZX is the only commercial FM station allocated to Culebra . This lateral change of frequency will allow WXZX (FM) to operate in compliance with all Section 73.207 allocation requirements. WXZX (FM) will have the coverage and listenership consistent with any Class A broadcast station. Finally, it will allow WXZX (FM) to have a broadcast facility that the Commission can issue a license without any further changes. Because of a daisy chain of rule making events which have yet to occur, no license can be issued on authorized Channel 254 A; consequentially, WXZX (FM) operates under the authority of a Special Temporary Authority on Channel 293 A.

REQUEST

It is hereby requested on behalf of La Gigante Radio Corporation the FM Table of Allotments, Section 73.202 be changed as follows:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Vieques	291 B	None
Culebra	254 A	291 A

All information contained herein is thought to be true and correct to the knowledge of the undersigned.



Clifton G. Moor
Technical Consultant to
La Gigante Radio Corporation

June 17, 2004

Bromo Communications, Inc.
Atlanta, Georgia

EXHIBIT 1

WXZZ (FM)
STA Frequency of 293 A

REFERENCE
18 19 19 N
65 17 59 W

CLASS = A
PR & VI Spacings

DISPLAY DATES
DATA 06-12-04
SEARCH 06-17-04

----- Channel 293 - 106.5 MHz -----

Call	Channel	Location	Power	Dist	Azi	FCC	Margin
N. Lat.	W. Lng.	Ant		HAAT			
RADD	ADD 293B	Christiansted	VI	92.35	134.8	178.0	-85.65
17 44 07	64 40 46		50.000 kW	150 M			
Ocean Fm Media & Island Pr							
ALLO	USE 291B	Vieques	PR	0.63	344.1	69.0	-68.37
18 19 39	65 18 05		50.000 kW	150 M			
ALLO	USE 293B1	Arecibo	PR	151.83	276.6	143.0	8.83
18 28 28	66 43 40		25.000 kW	100 M			
WNIKFM	LIC 293B1	Arecibo	PR	151.83	276.6	143.0	8.83
18 28 28	66 43 40	HN	19.500 kW	0 M			
Kelly Broadcasting System							
WNIKFM	CP -N 293B1	Arecibo	PR	152.91	275.8	143.0	9.91
18 27 20	66 44 24	NCX	25.000 kW	6 M			
Kelly Broadcasting System							
ALLO	USE 295B	Guayama	PR	82.84	253.8	69.0	13.84
18 06 48	66 03 07		50.000 kW	150 M			
WMEG	LIC 295B	Guayama	PR	82.84	253.8	69.0	13.84
18 06 48	66 03 07	CY	25.000 kW	594 M			
Wmeg Licensing, Inc.							
WFID.C	CP 239B	Rio Piedras	PR	52.34	268.6	15.0	37.34
18 18 36	65 47 41	CX	11.500 kW	848 M			
Madifide, Inc.							
WFID	LIC 239B	Rio Piedras	PR	83.22	265.9	15.0	68.22
18 16 00	66 05 05	CN	50.000 kW	287 M			
Madifide, Inc.							
ALLO	USE 239B	Rio Piedras	PR	83.22	265.9	15.0	68.22
18 16 00	66 05 05		50.000 kW	150 M			

Bromo Communications, Inc.
Atlanta, Georgia

EXHIBIT 2

WX2X (FM)

Proposed Frequency of 291 A

REFERENCE

18 19 19 N

65 17 59 W

CLASS = A

PR & VI Spacings

DISPLAY DATES

DATA 06-01-04

SEARCH 06-09-04

----- Channel 291 - 106.1 MHz -----

Call	Channel	Location	Power	Dist	Azi	FCC	Margin
N. Lat.	W. Lng.	Ant		HAAT			
ALLO	USE	291B Vieques	PR	0.63	344.1	178.0	-177.37
18 19 39	65 18 05		50.000 kW	150 M			
WCAD	LIC	289B San Juan	PR	86.07	267.1	69.0	17.07
18 16 54	66 06 46	CN	50.000 kW	335 M			
		Broadcasting & Progrmmng S	BMLH19891117KD				
ALLO	USE	289B San Juan	PR	86.07	267.1	69.0	17.07
18 16 54	66 06 46		50.000 kW	150 M			
RADD	ADD	293B Christiansted	VI	92.35	134.8	69.0	23.35
17 44 07	64 40 46		50.000 kW	150 M			
		Ocean Fm Media & Island Pr					
WRRH.A	APP-Z	291A Hormigueros	PR	179.05	263.9	115.0	64.05
18 08 33	66 58 56	ZC	0.800 kW	589 M			
		Renacer Broadcasters Corp.	BPH20011115AAA				
WRRH	LIC-N	291A Hormigueros	PR	179.05	263.9	115.0	64.05
18 08 33	66 58 56	NC	0.400 kW	577 M			
		Renacer Broadcasters Corpo	BLH20001002AHJ				
WJKC.C	CP -D	237B Christiansted	VI	92.35	134.8	15.0	77.35
17 44 07	64 40 46	DCY	27.000 kW	249 M			
		Radio 95, Incorporated	BPH20021212AAW				
ALLO	USE	237B Christiansted	VI	92.35	134.8	15.0	77.35
17 44 07	64 40 46		50.000 kW	150 M			
ALLO	USE	237B Christiansted	VI	92.35	134.8	15.0	77.35
17 44 07	64 40 46		50.000 kW	150 M			
ALLO	USE	291A Hormigueros	PR	193.95	262.5	115.0	78.95
18 05 12	67 07 00		6.000 kW	100 M			
